



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

March 18, 2020

By ECF and Email

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

MEMO ENDORSED

Re: *Brantley v. Municipal Credit Union et al.*, 19 Civ. 10994 (KPF)

Dear Judge Failla:

This Office currently represents the National Credit Union Administration (“NCUA”) in its capacity as conservator of the Municipal Credit Union (“MCU”) in the above-referenced litigation. I write respectfully to request that Defendant NCUA’s time to answer the Second Amended Complaint (ECF No. 9) be extended—potentially *nunc pro tunc*—to April 23, 2020,¹ and that the Initial Conference currently scheduled for March 24, 2020, be adjourned until after that date.

In its role as conservator, the Board of the NCUA succeeds to “all rights, titles, powers, and privileges of the credit union,” and may “conduct all business of the credit union” and “perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator.” 12 U.S.C. § 1787(b)(2)(A)(i), (B)(i), (B)(iii). Courts have held for structurally similar agencies that, when sued solely in their capacity as conservator for a financial institution, the agency “is not the United States,” and that “Plaintiff’s claim is, therefore, actually one between two non-governmental parties.” *Ameristar Fin. Servicing, Co. v. United States*, 75 Fed. Cl. 807, 812 (2007) (discussing Federal Deposit Insurance Corporation). The NCUA thus intends to retain private counsel to represent its interests as conservator of the MCU in this litigation. It therefore requests an extension of time to retain such counsel, substitute the new counsel for the United States Attorney’s Office, and respond to the Second Amended Complaint.

¹ The Second Amended Complaint was filed on January 3, 2020, and according to the docket was served on all parties on January 24, 2020 (ECF Nos. 12-19). Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A)(ii), the non-federal defendants’ time to answer was set as February 14, 2020, while pursuant to Rule 12(a)(2) the NCUA’s time to answer was set as March 24, 2020. As discussed herein, there is some ambiguity about whether the NCUA is a federal agency for purposes of Rule 12(a)(2) when acting solely in its capacity as a conservator of a private credit union, and thus it is not clear what the correct original deadline was for the agency to respond to the complaint.

This is the NCUA's first request for an extension or adjournment. All other Defendants consent to this request. Plaintiff does not consent, stating that the NCUA has already had sufficient time to answer the Complaint and that an additional extension would impede resolution of the case.

I thank the Court for its consideration.

Respectfully,

GEOFFREY S. BERMAN
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Application GRANTED. Defendant National Credit Union Association ("NCUA") shall respond to the Second Amended Complaint on or before April 23, 2020. Further extensions of time shall not be granted. The initial pretrial conference currently scheduled for March 24, 2020, is hereby ADJOURNED to May 5, 2020, at 10:00 a.m. in Courtroom 618 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York.

The Clerk of Court is directed to mail a copy of this Endorsement to Plaintiff.

Dated: March 18, 2020
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE